

Joseph Jackson
Associate Director
Federal Regulatory



FILED/ACCEPTED

NOV 21 2007

November 21, 2007

Federal Communications Commission
Office of the Secretary

1300 I Street, NW, Suite 400 West
Washington, DC 20005

Phone 202 515-2467
Fax 202 336-7922
joseph.r.jackson@verizon.com

Via Hand Delivery

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: **Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172**

Dear Ms. Dortch:

I am writing to respond to a letter filed by Consumer Federal of America ("CFA") and others in the dockets listed above.¹ CFA's letter suggests that it has been misled by the CLECs' rhetoric. In each of the MSAs for which Verizon seeks forbearance from the Commission's dominant carrier regulations and unbundling rules, Verizon has submitted voluminous maps and other data demonstrating that competition for the provision of both mass market and enterprise services is thriving and that these regulations are no longer necessary to protect consumers.²

¹ See Letter from Consumers Federal of America et al. to Chairman Kevin J. Market, November 13, 2007.

² See Petition of Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, WC Docket No. 06-172 ("Verizon Petitions") and Reply Comments, WC Docket NO. 06-172.

REDACTED – FOR PUBLIC INSPECTION

No. of Copies rec'd 0
List ABCDE

Verizon has submitted maps and other data that show CLECs, cable, wireless, and other intermodal providers have facilities and offer services throughout each of the MSAs, particularly in areas where demand for high-capacity services is concentrated.³ Other data Verizon has submitted demonstrates that cable company market share in each of these MSAs has continued to increase, while Verizon's access lines have declined, and that cable companies now provide service to customers in wire centers that account for the overwhelming majority of Verizon's residential access lines -- **[BEGIN HIGHLY CONFIDENTIAL] [END HIGHLY CONFIDENTIAL]** percent of the wire centers in these MSAs.⁴ Although CLECs have questioned the reliability of this data, evidence cable companies have submitted just in the last two weeks corroborate its accuracy.⁵

In addition, competitor profiles, web pages, marketing materials, press releases and other media information as well as independent analysts reports Verizon has submitted confirm that competitors -- including cable companies, wireless providers, other intermodal providers, and traditional CLECs -- are continuing to deploy network facilities and currently are offering both mass market and enterprise customers a full suite of telecommunications services.⁶ In short, in each of these MSAs, customers have many choices.

In the face of this overwhelming evidence showing that the Commission's dominant carrier regulations and unbundling rules are no longer necessary to protect consumers, CLECs and other proponents offer no evidence of their own and only try to argue around the extensive evidence Verizon has submitted. Now, CFA's letter suggests that CLECs have begun a campaign designed to mislead consumers into believing that, if

³ See Verizon Petitions, Lew Declaration, Exhibit 5, 8; October 10, 2007 Letter from Joseph Jackson to Marlene Dortch, Attachment H.

⁴ See NY Petition at 5, NY Declaration ¶ 28; Boston Petition at 5, Boston Declaration at ¶ 21; Philadelphia Petition at 5-6, Philadelphia Declaration ¶ 22; Pittsburgh Petition at 5, Pittsburgh Declaration ¶ 19; Providence Petition at 5, Providence Declaration ¶ 21; Virginia Beach Petition at 5, Virginia Beach Declaration ¶ 18 (collectively showing cable penetration by wire center); Verizon Reply Declaration, Exhibit 4 (percentage of wire centers with cable residential E911 listings); Verizon Reply Declaration, Exhibits 1, 3 (showing competitive LEC and carrier specific access lines by wire center); Verizon Reply Declaration ¶ 10, Tables 1 and 2 (showing decline in Verizon's access line base);

⁵ See [CTE Response to FCC Data Requests].

⁶ See Verizon Petitions, Lew Declaration, Exhibit 7; Reply Declaration, Exhibit 11; October 10, 2007 Letter from Joseph Jackson to Marlene Dortch, Attachment I and Attachment I (Supplement) (including statements from competitors that they are competing successfully); Lew Declaration, Exhibit 1 (data comparing competitor calling bundle prices and features); Lew Declaration, Exhibit 2 (data identifying Over-the-Top VoIP providers).

the Commission grants Verizon forbearance from unbundling obligations, competitive investment in broadband facilities will decline and rates for broadband services *likely* will increase. But the facts have shown and the FCC has agreed that removing regulations in the face of full competition is pro-competitive and results in an increase in services and lower prices.

First, although CLECs have argued, and CFA repeats unwittingly here, that forbearance from unbundling regulation would impede broadband investment, including investment in broadband infrastructure, both the Commission and the courts have repeatedly found that the opposite is true – that unbundling is likely to deter investment.⁷ This is borne out by experience. In the *Triennial Review Order*, the Commission made a considered judgment, later confirmed by the D.C. Circuit, to withhold most unbundling obligations from fiber or other broadband facilities. The Commission concluded that this approach would create the appropriate incentives for both ILECs and other providers to invest in next-generation broadband facilities, thus increasing broadband deployment and encouraging true, facilities-based competition. *See id.* As for other providers, the Commission said that “with the knowledge that incumbent LEC next-generation networks will not be available on an unbundled basis, competitive LECs will need to continue to seek innovative network access options to serve end users and to fully compete against incumbent LECs in the mass market.” *Id.* The Commission predicted that the “end result is that consumers will benefit from this race to build next generation networks and the increased competition in the delivery of broadband services.” *Id.*

In the three years following the *Triennial Review Order*, the Commission’s approach proved correct: the number of high-speed connections increased by more than two-and-a-half times – from less than 23 million lines in June 2003 to nearly 65 million lines in June 2006.⁸ Those increases were driven by facilities-based competition across numerous platforms, with cable broadband connections more than doubling (from 13.7 million to 28.5 million lines), DSL increasing by 265 percent (from 8.9 million to 23.5 million), and fiber connections increasing more than six-fold (from 111,386 to 700,083 lines).⁹ In addition, heavy investment has led to wide availability of wireless broadband services (both fixed and mobile) as well as ubiquitously available satellite broadband offerings. As the *Wall Street Journal* recently noted, broadband providers have responded to the “deregulatory environment” established by the Commission: “Verizon’s

⁷ *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978, ¶ 272 (2003) (“*Triennial Review Order*”), *vacated in part and remanded*, *USTA v. FCC*, 359 F.3d 554 (D.C. Cir.), *cert. denied*, 543 U.S. 925 (2004); *United States Telecom Assoc. v. FCC*, 359 F.3d 554, 580-84 (D.C. Cir. 2004).

⁸ Ind. Anal. & Tech. Div., Wireline Competition Bureau, FCC, *High-Speed Services for Internet Access: Status As of June 30, 2006* at Table 1 (Jan. 2007).

⁹ *Id.*

capital investments since 2000 exceed \$100 billion, and such competitors as Cingular, T-Mobile, and Sprint are following suit. So are the cable companies.”¹⁰ “North American telecom companies are projected to spend \$70 billion on new infrastructure this year, which is up 67% from 2003.”¹¹ And, also as predicted, this investment is not limited to the incumbent providers. A study commissioned by the Fiber-to-the-Home Council reports that, in addition to Verizon and other Bell companies, fiber is being deployed by 341 other providers who currently serve more than 400,000 subscribers.¹² There is no evidence to suggest that providing additional relief from unbundling would yield a different outcome.

To the contrary, Verizon has demonstrated that where the Commission has eliminated unbundling obligations in the past due to the existence of competition, Verizon has responded by making commercial alternatives available, such as Wholesale Advantage and numerous commercial agreements for line sharing and dark fiber,¹³ and has Verizon shown that numerous competitors use Wholesale Advantage and other services to provide telecommunications services to customers of all types and sizes. Verizon also demonstrated that competition from cable, wireless, and other intermodal sources that do not use UNEs is only increasing, and there is no realistic risk that these sources of competition will exit the market. As a result, Verizon will have a continuing incentive to provide access to facilities at commercially negotiated rates in order to keep business on its network to recover the substantial costs of its network investment. There is accordingly no basis for the Commission to speculate that Verizon would reject such requests in the future.

Second, although CFA’s letter repeats CLEC arguments that special access prices have increases in the wake of Commission deregulation, Verizon has demonstrated in the Commission’s special access proceeding that, since the Commission adopted its pricing flexibility rules, the number and types of competitors providing high-capacity services in both the wholesale and retail segments of this business has increased dramatically, and prices have declined.¹⁴ These competitors include traditional CLECs and IXCs, cable companies, wireless providers; fixed wireless, microwave, and other intermodal providers; equipment manufacturers, and systems aggregators.¹⁵ In addition to their own

¹⁰ *Broadband Breakout*, Wall St. J., Feb. 16, 2007, at A14.

¹¹ *Id.* (quotations omitted).

¹² RVA Market Research & Consulting, *FTTH/FTTP Update* 11 (Apr. 1, 2007), <http://www.ftthcouncil.org/documents/800832.pdf>.

¹³ See Letter from Dee May, Verizon, to Marlene Dortch, FCC, WC Docket No. 06-172 (FCC filed Sep. 12, 2007).

¹⁴ See Verizon Comments and Reply Comments, WC Docket No. 05-25 &RM-10593.

¹⁵ See Verizon Comments, WC Docket No. 05-25 at 13-36; Verizon Reply Comments, WC Docket NO. 05-25, at 20-36.

extensive networks, which Verizon has shown includes thousands of "on net" buildings and fiber networks that pass hundreds of thousands of additional buildings,¹⁶ these competitors have used Verizon's special access services to win customers of all types and sizes.¹⁷ As the Commission has acknowledged, for consumers of high-capacity services, "myriad providers are prepared to make competitive offers."¹⁸

As a result, prices customers pay for special access services have declined. Verizon has demonstrated that, since the implementation of pricing flexibility in 2001, the prices customers pay for Verizon's special access services from Verizon have dropped by nearly 28 percent per year in real terms, while the prices that customers pay for DS1 and DS3 services each have declined by roughly 5 percent per year.¹⁹ Verizon also demonstrated that these declines occurred not only for Verizon's customers as a whole, but also for many individual carriers, including some of the most vocal proponents of re-regulation of special access.²⁰ Moreover, the prices paid for special access services, as a whole and for individual services, have declined regardless of geography – declines occurred both in areas where Verizon has received Phase II pricing flexibility and in areas where Verizon is still subject to price-cap regulation.²¹ GAO's report, in fact, confirmed that special access prices have gone down in both regulated and in non-regulated areas.²² And in their recent testimony before Congress, Sprint's and Time Warner Telecom's CEOs both conceded that the actual prices paid for special access have in fact declined.²³ The assertion in CFA's letter that incumbents have consistently raised special access prices, therefore, is a CLEC myth; it is not real.

¹⁶ See Verizon Comments at 15; Martinian Decl., Exh. 1.

¹⁷ See Verizon Comments, WC Docket No. 05-25, Declaration of Quintin Lew ¶¶ 34-22 and supporting exhibits.

¹⁸ See Verizon/MCI Merger ¶ 74.

¹⁹ See Verizon Comments at 11-12; Taylor Supp. Decl. ¶¶ 11, 18 (attached to Verizon's comments as Attach. A).

²⁰ See Verizon Comments at 12-13.

²¹ See Taylor Supp. Decl. ¶ 22 & Table 7.

²² See GAO Report at 14, 27-28, 32.

²³ Transcript, Hearing of the Subcommittee on Telecommunications and the Internet of the House Committee on Energy and Commerce Subject: Digital Future of the United States, Part VI: The Future of Telecommunications Competition (Oct. 2, 2007) (Gary Forsee, CEO, Sprint acknowledged that special access rates "in fact may have come down," while Larissa Herda, President, CEO, and Chairman of Time Warner Telecom acknowledged that "if you see the prices, they look they're going down.").

If you have any questions, please let me know.

Sincerely,

Joseph Jackson

cc: Nick Alexander
Marcus Maher
Dana Shaffer
Don Stockdale